IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7447 of 1989

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ANIL J UPADHYAY

Versus

STATE OF GUJARAT

Appearance:

MR IS SUPEHIA for Petitioner

MR SP HASURKAR for Respondent No. 1

MR ND GOHIL AGP for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 13/04/2000

ORAL JUDGEMENT

Heard the learned advocates.

The petitioner challenges the order dated 18th August, 1989, made by the Deputy Commissioner of Police,

Vadodara City ordering removal of the petitioner from service, and confirmed in Appeal by the Commissioner of Police, Vadodara City, on 18th September, 1989. Pending this petition, the said order has been confirmed in further Appeal on 23rd January, 1991 by the Director General & Inspector General of Police, and in Revision on 20th August, 1991, by the State Government.

The facts leading to the present petition are as under :

The petitioner was serving as an Armed Police Constable under the Police Commissioner, Vadodara. It was alleged that on 29th November, 1984, the petitioner, under the influence of alcohol, visited the residence of one Champaklal Muljibhai Mistri, picked up a quarrel with him and abused him. Further, he was found to be in drunken condition at Pratapnagar Police Head Quarter. The petitioner was taken to the SSG Hospital, Vadodara for medical examination, where he was physically examined by the Medical Officer at about 12-00 o'clock at mid night. The blood sample of the petitioner was also collected for Chemical Analysis. The report of the Chemical Analyst opined that the blood sample contained alcohol to the extent of .1035%. The same being excessive, a prohibition offence was registered against the petitioner. The Summary Case No. 3432/85 was tried by the learned JMFC, Vadodara. By the judgment and order dated 31st December, 1987, the petitioner was acquitted of the charge. The learned Magistrate did not rely upon the report of the Chemical Analyst since the Doctor had not sealed the vial containing the blood sample by his personal seal, however, had sealed the same by a general seal of the SSG Hospital. This acquittal being technical in nature, a disciplinary proceeding was initiated against the petitioner by issuing a chargesheet on 23/26th September, 1988. The said chargesheet was duly replied to by the petitioner. The Inquiry Officer/disciplinary authority examined several police officers, and relying upon the statements given by the police officers and the report of the Chemical Analyser, held that the petitioner, at the relevant time, had consumed alcohol, but did not believe the allegation of visiting the residence of the complainant Champaklal or picking up quarrel with him. The petitioner being a Police Officer, having violated the prohibition law, he was, under the impugned order, ordered to be removed from service , which has been confirmed in Appeals and the Revision as aforesaid.

Mr. Supehia has submitted that the petitioner

having been acquitted by the Criminal Court, no disciplinary action could have been initiated against the petitioner. In any view of the matter, even if the disciplinary authority desired to hold disciplinary inquiry, in view of the provisions contained in Rule 445 of the Bombay Police Manual, 1959, no inquiry could have been initiated without affording an opportunity of hearing to the petitioner to show cause why such inquiry should not be initiated.

The finding of guilt recorded by the Inquiry Officer/disciplinary authority is based on no evidence in as much as the Medical Officer had opined that the petitioner, at the relevant time, was not under the influence of alcohol. Mr. Supehia has relied upon the judgments of the Hon'ble Supreme Court in the matter of CAPT. M. PAUL ANTHONY VS BHARAT GOLD MINES LTD. (AIR 1999, SC, 1416), and in the matter of THE DIVISIONAL PERSONNEL OFFICER, SOUTHERN RAILWAY VS T.R.CHALLAPAN (AIR 1975, SC 2216). He has also relied upon the judgments of this Hon'ble court in the matters of BACHUBHA RAMSINHJI VS SHRI SHIVLAL IPS & ORS (1970, GLR, 827); of DINESHCHANDRA RANCHHODLAL PATANI (Special Civil Application No. 2394/99, decided on 2nd December, 1989 (Coram : R.C.MANKAD, Act.CJ); of MANILAL DAHYABHAI SOLANKI VS THE STATE OF GUJARAT (Special Civil Application No. 1349/77, decided on 14th December, 1981 (Coram : S.B.Majmudar J); of VECHATBHAI SABURBHAI VS THE STATE OF GUJARAT (LETTERS PATENT APPEAL NO. 26/78, decided on 12th September, 1980 (Coram : B.J.Diwan CJ & N.H.Bhatt J), and GOVINDSING JAGNNATHSING VS DY. SECRETARY (LETTERS PATENT APPEAL NO.215/77, decided on 2nd April, 1980 (Coram : S.H.Sheth & S.L.Talati JJ)

The question whether after the acquittal of the delinquent in criminal prosecution, the disciplinary action can be initiated/proceeded further against such delinquent is well settled. The Hon'ble Supreme Court in the matter of Captn. M.Paul Anthony (supra) has summarised the law as under :

As we shall presently see, there is a consensus of judicial opinion amongst the High Courts whose decisions we do not intend to refer in this case, and the various pronouncements of this court, which shall be copiously referred to, on the basic principle that proceedings in a criminal case and the departmental proceedings can proceed simultaneously with a little exception. As we

> understand, the basis for this proposition is that proceedings in a criminal case and the departmental proceedings operate in distinct and different jurisdictional areas. Whereas in the departmental proceedings, where a charge relating to misconduct is being investigated, the factors operating in the mind of the Disciplinary Authority may be many such as enforcement of discipline or to investigate the level of integrity of the delinquent or the other staff, the standard of proof required in the those proceedings is also different than that required in a criminal case. While in the departmental proceedings the standard of proof is one of preponderance of the probabilities, in a criminal case the charge has to be proved by the prosecution beyond reasonable doubts. The little exception may be where the departmental proceedings and the criminal case are based on the same set of facts and the evidence in both the proceedings is common without there being a variance.

Thus, the contention that the petitioner having been acquitted by the criminal court could not have been prosecuted further in the departmental action, requires to be rejected. The reliance placed on the Bombay Police Manual and the judgment in the matter of Bachubha Ramsinh (supra) is totally misconceived. In the said judgment, the Hon'ble Bench has held that even after formation of State of Gujarat, the provisions contained in the Bombay Police Manual, 1959 will still be applicable to the police officers in the State of Gujarat. However, be it noted that at the relevant time, no other rules governing the service conditions of the Police Officers in the State of Gujarat were framed. Since then, the Gujarat Police Manual, 1975, has been compiled containing the rules governing the service conditions of the police officers in the State of Gujarat. In that view of the matter, the provisions contained in the Bombay Police Manual can not be relied upon. Besides, Mr. Supehia has not shown any provision in the Gujarat Police Manual equivalent to Rule 445 of the Bombay Police Manual, 1959. The contention that before initiating disciplinary action, the petitioner ought to have been afforded an opportunity of hearing and to show cause also requires to be rejected. In the matter of Captn. M. Paul Anthony (supra), the delinquent was dismissed from service as a result of a search conducted at the residence of the

delinquent and recovery of incriminating articles therefrom. Relying on the same evidence, the criminal court had recorded a finding in favour of the delinquent . The case of the prosecution was thrown on the ground that no search was conducted at the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In view of the said finding recorded by the criminal court, the Hon'ble Supreme Court held that the disciplinary authority relying on the same evidence, could not have recorded a finding of guilt against the delinquent. Similar is the case in the present matter. In the present case, but it can not be said that the disciplinary authority has relied upon the same evidence which was before the criminal court. All the witnesses examined in the course of disciplinary action were not examined before the criminal court. It is also evident that the acquittal is recorded because of the failure of the Medical Officer to seal the vial containing the blood sample with the seal containing his personal monogram. But the court has also recorded a finding that the report of the Chemical Analyser was contrary to the evidence of the Medical Officer and, therefore, was false. It appears that in the course of the disciplinary action, several police officers had deposed that at the relevant time, the petitioner was under the influence of alcohol. Relying upon these depositions, coupled with the report of the Chemical Analyser, the Inquiry Officer/disciplinary authority has recorded a finding of guilt against the petitioner. In my view, the criminal court having held the report of the Chemical Analyser to be false, the same could not have been relied upon in the disciplinary action. If the said report were not relied upon by the disciplinary authority, there is no other evidence except the depositions of other police officers on which a finding of guilt could have been recorded. The depositions of the police officers being contrary to the evidence of the Medical Officer, no finding of guilt could have been recorded on the basis of such evidence alone. I am, therefore, of the view that the Inquiry Officer/disciplinary authority has erred in relying upon the report of the Chemical Analyser. But for the said report, no finding of guilt could have been recorded against the petitioner. The entire exercise of holding the petitioner to be guilty is, therefore, vitiated. Consequently, , the impugned order requires to be quashed and set aside.

In the result, the petition is allowed. The impugned order dated 18th August, 1989, made by the

Deputy Commissioner of Police, Vadodara City is quashed and set aside. Consequently, the appellate orders dated 18th September, 1989, made by the Commissioner of Police, Vadodara City, and 23rd January, 1991, made by the Director General & Inspector General of Police and the revisional order dated 28th August, 1991, made by the State Government are quashed and set aside. The petitioner is ordered to be reinstated in service as Armed Police Constable. The period spent under suspension shall be treated as period of duty. The petitioner shall be paid the consequential difference of salary and shall also be given the other service benefits for the said period. The period from the date of removal from service till the date of reinstatement shall, on the principle of no work no pay, be treated as a period of extra ordinary leave without pay. The petitioner shall be reinstated in service and be given suitable posting within a period of three weeks from the date of the receipt of the writ of this court. In the event, the respondents fail to reinstate the petitioner within the period stipulated hereinabove, the petitioner shall be deemed to have been reinstated in service from the date of this order and shall be held to be entitled to receive pay and allowances and other service benefits from the date of this order. Rule is made absolute in the above terms. The respondents shall pay the cost of this petition. The cost is quantified to be Rs.5000/-. Registry is directed to send the writ forthwith.

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JOSHI